

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION AND
THE ENVIRONMENTAL QUALITY BOARD

In the Matter of the Application of Great
River Energy for a Certificate of Need
for the Cambridge Peaking Plant

FIRST PREHEARING ORDER

This matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on May 2, 2005, at 1:30 p.m., in the Small Hearing Room of the Minnesota Public Utilities Commission (Commission).

Michael J. Bradley, Esq., Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, appeared on behalf of Great River Energy (GRE). Michele Beck Jensen and Mark Strohfus also appeared.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department). Stephen Rakow, Hwikwon Ham, and Cynthia Fang, analysts for the Department, also appeared.

Dave Jacobson appeared for the staff of the Commission.

Bill Storm appeared for the staff of the Environmental Quality Board (EQB).

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. The parties to this matter as named in the Commission's Notice and Order for Hearing of April 8, 2005, are GRE and the Minnesota Department of Commerce.

2. The final date for filing Petitions to Intervene is May 31, 2005. Any persons petitioning to intervene as a party after that date may be restricted as to the scope of their participation. Petitions to Intervene must be filed with the Administrative Law Judge; the petition and any objections thereto must be served on all existing parties and the Commission.

3. Any person admitted to this proceeding as an intervenor after the date of this Order shall be bound by the terms of this Order.

4. Members of the public need not become formal parties to be considered participants in the hearing. Members of the public may offer either oral or written testimony, and they may offer exhibits for inclusion in the record. Any person desiring to become a formal party to the proceeding, however, must file a Petition to Intervene.

SCHEDULE

5. The following schedule is adopted:

Direct Testimony by all parties. GRE may supplement its application; it must identify which witnesses are sponsors of each section of evidence.	June 28, 2005
Rebuttal Testimony by all parties.	July 18, 2005
Public Hearing	July 26, 2005
Evidentiary Hearing	July 28-29, 2005
Deadline for receipt of written public comment	July 28, 2005
Briefs and Proposed Findings	August 12, 2005
ALJ Report	September 12, 2005

6. The above schedule will permit a Commission decision on or about October 12, 2005, which is slightly longer than the six-month period allowed by statute for certificate of need proceedings. GRE has agreed to extend that period in order to accommodate this schedule.

7. The public hearing will take place in Isanti Township at a location to be determined. There will be two public hearing sessions on that date, at 3:00 p.m. and 7:00 p.m. Staff of the Commission, the EQB, and the parties shall confer to determine the location of the public hearings.

8. The evidentiary hearing will take place beginning at 9:30 a.m. in the Commission offices at 121 Seventh Place East, Suite 350, St. Paul, Minnesota. The evidentiary hearing is open to the public.

9. The EQB anticipates that the Environmental Assessment (EA) will be available to the public on or about July 18, 2005. The EA will be posted on the EQB website as soon as it is available.

PROCEDURE

10. The Rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

FILING OF DOCUMENTS

11. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

12. All documents filed, including prefiled testimony, **but excluding information requests and responses**, shall be filed as follows:

- a. The original shall be filed with the court reporter.
- b. One copy shall be filed with the Administrative Law Judge.
- c. One copy shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy, where possible, shall also be sent by email to persons whose email address is provided on the service list. The Office of Administrative Hearings will revise the list as necessary. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.
- d. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed to the Office of Administrative Hearings or delivered to the Executive Secretary of the Commission. Filings to the Administrative Law Judge may be accomplished by email, sent to Kathleen.Sheehy@state.mn.us, or facsimile transmission, facsimile number 612-349-2665. Any filing sent by email or facsimile transmission will be followed by a hard copy.
- e. Proof of service shall be filed with each filed document or within three business days thereafter.
- f. An electronic copy of prefiled testimony shall be served on the other parties and the court reporter by 3:00 p.m. on the day it is due.

DISCOVERY

13. All requests for information shall be made in writing, or electronically followed by writing, to the person from whom the information is sought, with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within eight business days after receipt of the request, unless the requesting party agrees to provide additional

time. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to all other parties unless specifically requested by a party. Information requests or responses received after 3:00 p.m. on business days or on weekends or State holidays shall be considered as being received on the following business day, except that any U.S. Mail received during business hours shall be considered as being received on the same day.

14. In the event the information cannot be supplied within the eight business days, the responding party shall notify the requesting party within four business days of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference among the Administrative Law Judge and affected parties.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

15. Prefiled testimony shall be marked and received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties by email no later than three days before the evidentiary hearing starts.

16. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or surrebuttal testimony and exhibits.

17. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: GRE first, then the Department.

EXAMINATION OF WITNESSES

18. Witnesses shall be allowed ten minutes to summarize their prefiled testimony.

19. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

20. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states by motion its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties **by July 22, 2005**. If an objection is

made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated this 4th day of May, 2005.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge